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# FOREWORD TO "THE VALUATION OF PROPERTY IN THE ROMAN LAW"

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COMPARATIVE law took an important part in the constructive period of American law. In the hands of Kent and Story and their contemporaries and immediate successors study of the Roman law and of the law of Continental Europe bore fruit in liberal development of common-law doctrines, in intelligent filling of gaps in the common-law system and in the reception and adaptation of a law merchant based to no small extent on the Continental commercial law. Later, when the building of an American common law had been achieved, the energies of jurists turned for a season to analytical and historical investigation of the common law, as received and adapted, in order to reach its fundamental ideas, develop them logically, and give the system form and internal coherence. The critical exposition of civil-law doctrines and institutions, in comparison with our own law, which had characterized the books of an earlier generation decayed into a brief prefatory statement or a few perfunctory historical references by way of introduction.

There is nothing peculiar to us in this phenomenon. In legal history periods of growth and expansion call for and rely upon philosophy and comparative law. Periods of stability, striving for perfection of the form of the law rather than for development of its substance, rely upon analysis and history. The scientific treatment of law begins in the taking of distinctions between cases which are superficially analogous and establishment of categories and "differences." This simple form of analysis is appropriate to the stage of the strict law. Later the attempt to put principles behind distinctions and to generalize this comparison

of rules within the legal system leads to comparison with like rules or rules on like subjects in other systems. This step is suggested by Cicero in the transition to a stage of growth in Roman law and by Fortescue near the end of the stage of the strict law in England. In the period of growth and expansion marked by the development of equity and reception of the law merchant it is marked. With the rise of the analytical method in the nineteenth century it largely disappears. We may be confident, therefore, that the revival of serious use of comparative law in our legal literature is a significant sign of the times.

It is significant also that a critical study of Roman law for purposes of a modern legal problem comes from a practical practising lawyer who has found it worth while in the pursuit of a specialized branch of the practice. It will be perceived at once that this study has utility beyond its immediate subject wherever valuation of property must be had in some form. But its chief interest to the observer of legal progress is in its testifying to a new spirit in our treatment of the law. The need for comparative study of law in this country did not come to an end with Kent and Story.